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**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA, OAKLAND DIVISION**

CHASOM BROWN, *et al.*, individually and  
on behalf of themselves and all others  
similarly situated,

Plaintiffs,

v.

GOOGLE LLC,  
Defendant.

Case No. 4:20-cv-03664-YGR-SVK

**DEFENDANT GOOGLE LLC'S  
ADMINISTRATIVE MOTION TO SEAL  
THE COURTROOM FOR JANUARY 10,  
2023 HEARING**

Referral: Hon. Susan van Keulen, USMJ  
Hearing Date: January 10, 2023  
Hearing Time: 10:00 A.M.

## I. INTRODUCTION

In accordance with Section 5.2(b) of the Protective Order (Dkt. 81), Plaintiffs informed Google that they intend to discuss at the January 10, 2023 hearing information that Google has designated as Confidential or Highly Confidential-Attorneys' Eyes Only. Noticed for the January 10 hearing are Google's Motion for Relief Regarding Preservation (Dkt. 782), Plaintiffs' Response (Dkt. 800), and Google's Reply (Dkt. 806). *See* Dkt. 792. In addition, the parties have filed a Joint Letter Brief regarding preservation that may also be discussed. Dkt. 818. All of these filings contain information sought to be redacted from the public docket pursuant to the Protective Order in this case. *See* Dkts. 781, 802, 805, 817.

Google will also need to freely speak regarding the substance of the filings, including the information that has been redacted from the public docket. These discussions will contain Google's confidential and proprietary information regarding highly sensitive features of Google's internal systems and operations that Google does not share publicly, including (1) Google's internal data structures and fields at issue, such as particular logs, locations, and identifiers, and (2) internal metrics related to Google's storage of data, costs associated with that storage, and information on Google's processes for doing so. This information is at the heart of the hearing.

Therefore, Google now moves the Court to seal the courtroom for the January 10, 2023 hearing. In light of the highly confidential material to be discussed at the January 10, 2023 hearing, Google asked Plaintiffs if they opposed Google's request. Fortenbery Decl., ¶ 3. Plaintiffs stated they do intend to discuss confidential material, but they also oppose Google's request. *Id.* To the extent the Court believes particular issues may be discussed publicly without discussion of Google's confidential information, such as legal arguments regarding the effect of the Court's Class Certification Order on Google's preservation obligations, Google requests such issues be taken up first, followed by sealed discussion of remaining matters that will necessarily entail disclosure of Google's confidential information.

## II. LEGAL STANDARD

The common law right of public access to judicial proceedings is not a constitutional right and it is "not absolute." *Nixon v. Warner Commc'ns, Inc.*, 435 U.S. 589, 598 (1978); *Crowe v. Cty.*

1 of *San Diego*, 210 F. Supp. 2d 1189, 1194 (S.D. Cal. 2002) (“[T]here is no right of access which  
 2 attaches to all judicial proceedings.” (internal citations omitted)). The right is weakest where, as  
 3 here, the proceedings concern a non-dispositive discovery motion; rather than satisfy the more  
 4 stringent “compelling reasons” standard, a party seeking to seal materials in these circumstances  
 5 must make only a “particularized showing” of “good cause.” *Kamakana v. City & County of*  
 6 *Honolulu*, 447 F.3d 1172, 1178–80 (9th Cir. 2006). Such sealing at trial is appropriate when the  
 7 information at issue constitutes “competitively sensitive information,” such as “confidential  
 8 research, development, or commercial information.” *France Telecom S.A. v. Marvell Semiconductor*  
 9 *Inc.*, 2014 WL 4965995, at \*4 (N.D. Cal. Oct. 3, 2014); *see also Phillips v. Gen. Motors Corp.*, 307  
 10 F.3d 1206, 1211 (9th Cir. 2002) (acknowledging courts’ “broad latitude” to “prevent disclosure of  
 11 materials for many types of information, including, but not limited to, trade secrets or other  
 12 confidential research, development, or commercial information”); *Standard & Poor’s Corp. Inc. v.*  
 13 *Commodity Exch., Inc.*, 541 F. Supp. 1273, 1275 (S.D.N.Y. 1982) (“[T]he overriding interest to be  
 14 found in business confidences . . . require[s] . . . temporary reasonably restricted access to the  
 15 Courtroom of members of the public.”).

### 16 **III. THE HEARING SHOULD BE SEALED BECAUSE PARTIES’ ARGUMENTS WILL** 17 **NECESSARILY INVOLVE DISCLOSURE OF GOOGLE’S HIGHLY SENSITIVE** 18 **MATERIAL**

19 All facts weigh in favor of sealing the January 10, 2023 hearing. The “good cause” standard  
 20 that governs the sealing determination in non-dispositive motions is easily met. The parties’ briefing  
 21 contains detailed discussions on Google’s confidential information, including the highly sensitive  
 22 features of Google’s systems and operations. *See* Dkts. 782, 800, 806, 818. As explained in the  
 23 Administrative Motions and supporting papers seeking redaction of these filings, the information  
 24 sought to be sealed for this hearing reveals Google’s internal strategies, system designs, and business  
 25 practices for operating and maintaining data related to many of its important services while  
 26 complying with its legal and privacy obligations. *See* Dkts. 781, 802, 805, 817. Such information  
 27 is protectable and must be kept confidential in order to prevent harm to Google’s competitive  
 28 standing. *Id.* Moreover, public disclosure of Google’s confidential information may put Google at  
 an increased risk of cybersecurity threats. *Id.*

1 While Google has previously sought to seal only portions of hearings (or only particular data  
 2 sources that may be referenced), this hearing is likely to focus on the details of particular data Google  
 3 is storing. It will necessarily entail detailed discussion of the information Google has sought to  
 4 redact from the public record in the underlying briefing, such as the size and location of particular  
 5 data sources, Google's costs associated with storing that data, specific identifiers contained in the  
 6 data, and the import (or non-import) of particular fields. Finding code names or otherwise avoiding  
 7 discussion of these specifics is infeasible, given the subject matter of the hearing.

8 Given the importance and highly sensitive nature of the aforementioned information related  
 9 to the parties' disputes, Google believes that sealing the courtroom is the correct and most effective  
 10 approach. To the extent the Court believes particular issues may be discussed publicly without  
 11 discussion of Google's confidential information, such as legal arguments regarding the effect of the  
 12 Court's Class Certification Order on Google's preservation obligations, Google requests such issues  
 13 be taken up first, followed by sealed discussion of remaining matters that will necessarily entail  
 14 disclosure of Google's confidential information.

#### 15 **IV. CONCLUSION**

16 For the foregoing reasons, Google respectfully requests that the Court seal the January 10,  
 17 2023 hearing.

18 DATED: January 6, 2023

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 20 By /s/ Andrew H. Schapiro

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